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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,287	11/28/2005	Aki Vanhatalo	915-001.059 (35977-US-PCT)	9403
73658 Nokia, Inc. 6021 Connection Drive, MS 2-5-520 Irving, TX 75039	7590 08/31/2010		EXAMINER CASCA, FRED A	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 08/31/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,287

Applicant(s)

VANHATALO, AKI

Examiner

FRED A. CASCA

Art Unit

2617

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment filed on June 23, 2010. Claims 1-14 and 16-17 are still pending in the present application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Specifically, the claims recite a "computer program product having program code stored on a readable medium." The specification does not provide any clear explanations as to what the readable medium is. Without a clear explanation in the specification the claim is subject to the broadest reasonable interpretation. Thus, based on broadest reasonable interpretation, the readable medium could be a transitory pure signal therefor rendering the claim as a whole non-statutory. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelaez et al (US 2003/0147373) in view of Hymel (US 2003/0216137 A1) and further in view of Oren (US 2003/0169865).

Referring to claim 1, Pelaez discloses a method (abstract and figure 1) comprising:

making a request in a device for establishing a connection with a receiver (Fig. 3 step 300, “a call is received from a user of a first device to a user of a second device”),

as a response to a failed attempt for establishing the connection (Par. 23, Fig. 3 step 302, “is the second device available”, note that the unavailability of the second device is commonly associated with failed attempt for establishing the connection),

the device starting a multimedia messaging service (figure 3 step 304-308, and paragraph 5, and Par. 23, particularly Par. 23, lines 9-14, “send a multimedia mail message”, note that in figure 3, steps 304-308 are equivalent to “starting a multimedia message service (MMS)”, particularly as described in Par. 23, the step of providing the first user with an option to send a multimedia mail message is equivalent to the start of a multimedia messaging service)

and activating a recording function of a sound clip (figure 3 and paragraphs 5 and 12, “voice”),

recording a voice message as a sound clip of a multimedia message in a memory of the device (Fig. 3 and par. 5, 12, 24 and particularly, Par. 25, lines 4-9, “the first device preferably buffers and records the multimedia mail message”),

and transmitting the created multimedia message to the receiver (paragraph 5, lines 24-25, and Par. 26, lines 12-14, “user of the second device retrieves the message”).

Pelaez is silent on whether or not the message is recorded in a volatile random access memory (RAM), as claimed. Pelaez’s recording takes place in the sender’s buffer, and the buffer could be a volatile RAM or a non-volatile memory. However, storing messages in volatile RAM is conventional in the art, and further, buffers are commonly used in the form of volatile RAM. An advantage of using volatile RAM is faster storing process, getting quicker access to the saved data, and avoiding storing data permanently unnecessarily.

Hymel discloses recording a voice message in a random access memory of the device (paragraph 17 and figures 1-2).

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the method of Pelaez in the format claimed by applicant by incorporating the teachings of Hymel, for the purpose of providing convenience to users, saving time and using bandwidth efficiently, and thus providing an efficient messaging system.

The above combination is silent on starting the multimedia automatically.

In an analogous art, Oren discloses that in response to a failed attempt the device automatically starts a multimedia messaging service (Fig. 1 and par. 21-22).

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the combination in the format claimed by applicant by incorporating the teachings of Oren, for the purpose of providing convenience to users, saving time and using bandwidth efficiently, and thus providing an efficient messaging system.

Referring to claim 2, the combination of Pelaez/Hymel/Oren disclose the method of claim 1 and further disclose an identifier (inherent) in the multimedia message by which the message can be identified as claimed by applicant (Pelaez, Fig. 3, Par. 5 and 23-26).

Referring to claim 3, the combinations of Pelaez/Hymel/Oren disclose the method of claim 1 and further disclose in addition to the sound clip, one or a combination of the following is attached in the multimedia message: text, picture, and video image (Pelaez, paragraphs 12 and 14, "audio, voice, video," "text").

Referring to claim 4, the combinations of Pelaez/Hymel/Oren disclose the method of claim 1, and further disclose the step of automatically transmitting the message containing the sound clip to the receiver (Palaez, Fig. 3, and Natsumo, Fig. 8).

Referring to claim 6, the combinations of Pelaez/Hymel/Oren disclose the method of claim 1, and inherently disclose the message transmitted is the number to which the original request for connection is made (Palaez, Fig. 3, and Natsumo, Fig. 8. Also see the rejection of claim 1).

6. Claims 5 and 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pelaez et al (US 2003/0147373) in view of Hymel (US 2003/0216137 A1), further in view of Oren (US 2003/0169865) and further in view of well known prior art (MPEP 2144.03).

Referring to claim 5, the combinations of Pelaez/Hymel/Oren disclose the method of claim 1. The combination is silent on whether or not the step of transmitting to the receiver is as a response to a confirming function as claimed.

The examiner takes official notice of the fact that transmitting as response to a confirming message is well known in the art.

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the method of Pelaez in the format claimed by applicant for the purpose of providing an efficient messaging system.

Referring to claim 7, the combinations of Pelaez/Hymel/Oren disclose the method of claim 1.

The combination is silent on message being transmitted to the voice mail box of the number to which the original request for connection was made.

The examiner takes official notice of the fact that transmitting voice or multimedia signals to the voice mail box of a user is well known in the art.

It would have been obvious to one of the ordinary skill in the art at the time of invention to modify the combination as claimed, for the purpose of providing convenience to users, saving time and using bandwidth efficiently, and thus providing an efficient messaging system.

Referring to claims 8-14 and 16-17, claims 8-14 and 16-17 are rejected for the same arguments/reasons that were made in the rejection of claims 1-7 above.

Response to Arguments

7. Applicant's arguments with respect to claims 1-14 and 16-17 have been fully considered but they are moot in view of new grounds of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

References Skinner (US 6529737) and Joong (US 5937355) discloses systems and methods of automatically sending voice message in response to connection failures.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED A. CASCA whose telephone number is (571)272-7918. The examiner can normally be reached on Monday through Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Harper, can be reached at (571) 272-7605. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Fred A. Casca/

Examiner, Art Unit 2617

/VINCENT P. HARPER/

Supervisory Patent Examiner, Art Unit 2617